IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 18297 of 2004
Date of decision : 7-11-2006

Municipal Corporation, Faridabad, through its Administrative Officer. … Petitioner

Versus

Sanjay and others … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Ajay Bhardwaj, Advocate,
for the petitioner

Ms. Abha Rathore, Adocate,
for the respondents

…

ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 16.3.2001 Annexure P-4, ordering reinstatement of respondent No.1-workman with continuity of service along with 70 per cent back wages from the date of demand notice.

Respondent No.1-workman was appointed as Pump Operator on 1.10.1995 by the petitioner-department. Later on, his termination from service with effect from 1.7.1996 gave rise to an industrial dispute. He alleged that his services were terminated illegally, without complying with the provisions of Section 25-F of the Industrial Disputes Act,1947 (in short the Act). On the contrary, the stand of the department was that the workman had not worked for 240 days in a calendar year preceding the date of his termination.

In support of their respective case, evidence was led by

the parties.

The learned Labour Court after holding that the services of the workman were terminated illegally in violation of Section 25-F of the Industrial Disputes Act,1947, (in short, the Act), passed the impugned award in the manner indicated above. Hence, the present writ petition by the petitioner-department.

Upon notice of motion, respondent No.1- workman has filed written statement stating therein that in two even dated awards passed in favour of Ranjit Singh and Bijender Singh, the similarly situated workmen like the respondent-workman, the petitioner-department has reinstated them in service while in the case of respondent-workman it has chosen to challenge the award through this writ petition. Besides this, a preliminary objection has been raised that the writ petition deserves to be dimissed on the ground of delay and laches as the impugned award was passed on 16.3.2001 whereas the present petition has been filed after about 3-1/2 years.

We have heard the learned counsel for the parties.

Learned counsel for the petitioner-department has argued that the respondent-workman had only worked from 6.11.1995 to 30.4.1996 and thus, has questioned the completion of 240 days by him preceding 12 months from the date of his termination. There is no force in this contention. A bare perusal of of the case file shows that it was the clear cut stand of the respondent-workman that he worked with effect from 1.10.1995 till 30.6.1996 as Water Pump Operator. His services were terminated with effect from 1.7.1996. However, the petitioner-department in the written statement had not controverted the said plea of the respondent-workman. They had also not asserted any counter plea that the respondent-workman in fact had worked from 6.11.1995 to 30.4.1996and not as alleged by the workman. It is basically a question of fact. It is a settled proposition of law that the parties cannot go beyond their pleadings. Further, a perusal of the impugned award shows that the petitioner-department in order to prove its case, tendered into evidence only marked documents without formally proving the same and withheld muster-rolls for the months of May and June,1996, which they could easily place on record to negative the case of the respondent-workmamn but for the reasons best known to them, withheld

the same leaving the Labour Court to draw an adverse inference against them.

The matter does not rest here. Similarly situated co-workers, namely, Ranjit Singh and Bijender Singh, had also been reinstated along with 70 per cent back wages vide even dated awards, Exhibits R-1/1 and R-1/A. The office orders, Annexures R-1/2 and R-1/2A show that the awards qua them have been duly implemented without having been challenged in this Court. Learned counsel for the petitioner-department has not been able to meet the objection raised by counsel for respondent-workman that why they have adopted pick and choose policy and what impressed them to challenge the award of respondent-workman and not that of the two co-workers, namely, Ranjit Singh and Bijender Singh.

Further, the impugned award was passed on 16.3.2001 whereas the petitioner-department has filed the instant petition in October, 2004, i.e. after a delay of 3-1/2 years. There is no explanation for such a delay. The Supreme Court in the case of Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271 has clearly held that an aggrieved party has to move the Court within a period of six months or at best within one year of the date when cause of action accrued. Sadasivaswamy's case (supra) has been followed by this Court in the case of Harvinder Singh vs. State of Punjab & Ors. 2005 (2) SLR 587. Therefore, the instant petition also suffers from delay and latches. No relief can be granted to the petitioner.

In view of the discussion above, we find no infirmity in the impugned award passed by the Labour Court. The petition is wholly without merit and the same is dismissed accordingly. No costs.

(ARVIND KUMAR)
JUDGE

November 7, 2006
JS

(J.S. NARANG)
JUDGE